

1 Katherine F. Parks, Esq.
2 Nevada Bar No. 6227
3 Thorndal Armstrong, PC
4 6590 S. McCarran Blvd., Suite B
5 Reno, Nevada 89509
6 Tel: (775) 786-2882
7 kfp@thorndal.com
8 Attorney for Defendants
9 CARSON CITY, JASON BUENO, SEAN PALAMAR, TYSON LEAGUE,
10 JASON WOODBURY, and KENNETH FURLONG

7 UNITED STATES DISTRICT COURT
8 DISTRICT OF NEVADA

9 DREW J. RIBAR,

10 Plaintiff,

11 vs.

Case No. 3:24-cv-00103-ART-CLB

12 STATE OF NEVADA EX. REL. NEVADA
13 DEPARTMENT OF CORRECTIONS,
14 CARSON CITY AND ITS SHERIFFS
15 OFFICE, CARSON CITY DISTRICT
16 ATTORNEYS OFFICE, CARSON CITY
17 MANAGERS OFFICE, FERNANDEIS
18 FRAZAIER IN HIS OFFICIAL CAPACITY
19 AS WARDEN OF NORTHERN NEVADA
20 CORRECTIONAL, AARON RYDER IN HIS
21 OFFICIAL CAPACITY AS AN OFFICER OF
22 NEVADA DEPARTMENT OF
23 CORRECTIONS, ROBERT SMITH IN HIS
24 OFFICIAL CAPACITY AS AN OFFICER OF
25 NEVADA DEPARTMENT OF
26 CORRECTIONS, JASON BUENO IN HIS
27 OFFICIAL CAPACITY AS AN OFFICER OF
28 CARSON CITY SHERIFF, SEAN
PALAMAR RYDER IN HIS OFFICIAL
CAPACITY AS AN OFFICER OF CARSON
CITY SHERIFF, TYSON DARIN LEAGUE
RYDER IN HIS OFFICIAL CAPACITY AS
AN OFFICER OF CARSON CITY DISTRICT
ATTORNEY, JAMES DZURENDA
(DIRECTOR NEVADA DEPARTMENT OF
CORRECTIONS), JASON D. WOODBURY
(CARSON CITY DISTRICT ATTORNEY),
KENNETH T. FURLONG IN HIS
CAPACITY AS SHERIFF CARSON CITY,
NV, OFFICER/DEPUTY/J. DOE 1-99,

Defendants.

**REPLY MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

COME NOW Defendants CARSON CITY, JASON BUENO, SEAN PALAMAR, TYSON LEAGUE, JASON WOODBURY, and KENNETH FURLONG, by and through their attorneys, Thorndal Armstrong, PC, and hereby submit their Reply Memorandum of Points and Authorities in support of their Motion for Summary Judgment filed on October 9, 2024 [ECF #29]. As is discussed herein, Plaintiff Drew Ribar offers no meaningful argument and no evidence in opposition to the Defendants’ motion. Rather, Ribar cites to what he describes as “newly provided evidence” in his opposition (relative only to his First Amendment claim against the City) without submitting any such evidence to the Court and without having produced any such evidence in this case. In addition, Ribar fails to offer any argument or opposition on numerous aspects of the Defendants’ motion. There are no genuine issues of material fact in this case given that the events surrounding the arrest of Ribar on August 30, 2022, were recorded on video by Ribar himself, and in body camera and dash camera video of the responding law enforcement officers. Based upon this undisputed evidence, summary judgment in favor of the Defendants is warranted on all of the claims set forth in Ribar’s Complaint.

I

INTRODUCTION

This case involves the arrest of Ribar on August 30, 2022, after the Carson City Sheriff’s Office received a call from officers with the Nevada Department of Corrections that Ribar was trespassing and was disrupting operations at the Northern Nevada Correctional Center to such an extent that the prison facility and surrounding areas had to be placed into lockdown. This case is decidedly *not* about Carson’s City’s attempt to somehow interfere with Ribar’s First Amendment rights. While Ribar may characterize the case as such, Defendants have submitted undisputed evidence to the Court which demonstrates that summary judgment should be entered in their favor as to all claims brought against them.

Summary judgment is always proper “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there are no genuine issues as to any material fact and the moving party is entitled to judgment as a matter of law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251, 106 S. Ct. 2505 (1986). In this case,

1 the Defendants provided the Court with evidence in the form of videos which document the
2 events of August 30, 2022, as well as sworn declarations and other admissible evidence in
3 support of their motion. Where a moving party has met its initial burden with a properly
4 supported motion, the party opposing the motion “may not rest upon the mere allegations or
5 denials of his pleading but . . . must set forth specific facts showing that there is a genuine issue
6 for trial.” *Id.* at 249.

7 Ribar filed an opposition to the Defendants’ motion on October 30, 2024, which failed to
8 address numerous arguments presented by the Defendants and which was submitted to the Court
9 without *any* evidence. *See*, ECF #32. In this regard, and in connection with Ribar’s purported
10 First Amendment claim, Ribar references “newly provided evidence” in the form of an email
11 allegedly associated with an individual named William B. Moore who Ribar claims had a
12 comment deleted from “an official Carson City social media post” which was critical of Deputy
13 Jason Bueno. Ribar also refers to information he claims to have received in September of 2022,
14 which he describes as a “block list” of nine individuals whom Ribar claims are not permitted to
15 post on an unidentified social media site related to the Carson City Sheriff’s Office. Ribar has
16 not produced any such documents in this case and discovery closed on September 9, 2024.
17 Further, Ribar did not submit any of this alleged evidence with his opposition to the Defendants’
18 dispositive motion. Rather, Ribar’s opposition consists entirely of conclusory allegations
19 unsupported in the record. The evidence submitted by the Defendants, which consists of
20 uncontroverted video of the events in question, demonstrates, without question, that the
21 Defendants are entitled to judgment in their favor as a matter of law pursuant to FRCP 56.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28

II

LEGAL ANALYSIS**A. RIBAR FAILED TO ADDRESS NUMEROUS OF THE ARGUMENTS SET FORTH IN DEFENDANTS' MOTION AND SUMMARY JUDGMENT SHOULD BE ENTERED AS TO ALL SUCH CLAIMS FOR RELIEF.****1. Non-suable Entities Named in the Case Should be Dismissed.**

As set forth in Defendants' Motion for Summary Judgment, Ribar named a number of non-suable departments of Carson City in his Complaint, including the Carson City Sheriff's Office, the Carson City District Attorney's Office, and the Carson City Manager's Office. All are departments of the political subdivision of Carson City and none are subject to suit. *See, Scheider v. Elko County Sheriff's Dep't.*, 17 F. Supp.2d 1162, 1164 (D. Nev. 1988) and *Wayment v. Holmes*, 112 Nev. 232, 237-38, 912 P.2d 816 (Nev. 1996). Ribar failed to offer any opposition to the Defendants' arguments in this regard and these non-suable entities should be dismissed on summary judgment.

2. Sheriff Ken Furlong and Carson City District Attorney Jason Woodbury Should be Dismissed on Summary Judgment.

Ribar also failed to address the Defendants' arguments as to why Carson City Sheriff Ken Furlong and Carson City District Attorney Jason Woodbury are entitled to judgment in their favor as a matter of law. As set forth in Defendants' motion, Ribar has wholly failed to allege that either Sheriff Furlong or District Attorney Woodbury were individually involved in the alleged violation of constitutional rights guaranteed by either the federal or state constitution. In order to succeed on a claim based upon the alleged violation of constitutional rights, Ribar must show that each individual defendant was personally involved in the alleged constitutional deprivation at issue. *See, Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1999). Ribar has failed to offer any such evidence and did not present any arguments in opposition to the Defendants' motion in this regard. Nor did Ribar offer any evidence in response to the Defendants' argument that District Attorney Woodbury would be entitled to absolute prosecutorial immunity even if there were any evidence of his personal participation in the events at issue. Accordingly, Sheriff Furlong and Mr. Woodbury should be dismissed from the case on summary judgment.

1 **3. Deputy Sean Palamar Should be Dismissed on Summary Judgment.**

2 Ribar also failed to offer any evidence or argument with respect to that aspect of the
3 Defendants' motion related to the dismissal of Ribar's claims against Deputy Sean Palamar
4 based upon the towing of Ribar's vehicle following his arrest. As articulated in the Defendants'
5 motion, Sean Palamar's involvement in the events at issue was primarily limited to calling a tow
6 truck to have Ribar's vehicle removed from Snyder Avenue leading to the prison to a local tow
7 yard following Ribar's arrest. *See*, ECF # 29, Exhibit 5. Defendants set forth a detailed analysis
8 of why any claim premised upon an unlawful seizure of Ribar's vehicle based upon Deputy
9 Palamar's actions is subject to dismissal as a matter of law. *See*, ECF #29, Section E. In
10 requesting that Ribar's vehicle be towed from Snyder Avenue (an area designated as a no-
11 parking zone by the Nevada Department of Corrections), Deputy Palamar was acting reasonably
12 and in accordance with his community care-taking function. *See, Miranda v. City of Cornelius*,
13 429 F.3d 858, 862 (9th Cir. 2005). Parking along Snyder Avenue, a road leading to a medium
14 security prison and prison grounds, is not permitted. *See*, ECF #29, Exhibit 5. At the time of his
15 arrest, Ribar's vehicle was parked on Snyder Avenue. After speaking with NDOC officers,
16 Deputy Palamar called a tow truck to have Ribar's vehicle removed from Snyder Avenue and
17 taken to a local tow yard. *Id.* Under these circumstances, and in accord with applicable legal
18 precedent, Deputy Palamar's actions did not amount to an unlawful seizure in violation of the
19 Fourth Amendment.

20 Further, the law was not clearly established such that a reasonable officer in Deputy
21 Palamar's position would have been on notice that his actions were unlawful. To constitute
22 clearly established law, the particular rule at issue "must be so well defined that it is clear to a
23 reasonable officer that his conduct was unlawful in the situation he confronted." *Peck v.*
24 *Montoya*, 51 F.4th 877, 887 (9th Cir. 2022).

25 Ribar does not even mention Deputy Palamar's name in his opposition to the Defendants'
26 Motion for Summary Judgment nor does he offer any argument as to why Deputy Palamar is not
27 entitled to dismissal from this case both on substantive grounds and under the doctrine of
28 qualified immunity. Certainly, he provides no legal precedent suggesting that the law was

1 clearly established that the actions of Deputy Palamar in having Ribar's vehicle towed from the
2 road leading to the prison (a no-parking zone) was in violation of the Fourth Amendment.
3 Accordingly, Deputy Palamar is entitled to summary judgment in his favor and should be
4 dismissed from the case as a matter of law.

5 **4. Ribar Failed to Address or Oppose Defendants' Motion for Summary Judgment**
6 **on Behalf of Defendant Tyson League and any Claims Based Upon Malicious**
7 **Prosecution.**

8 Ribar also failed to meaningfully address that aspect of the Defendants' motion seeking
9 summary judgment of those claims brought against Carson City Deputy District Attorney Tyson
10 League. The only mention Ribar makes regarding his malicious prosecution claim is to state that
11 "the absence of a conviction satisfies the favorable termination" element of a malicious
12 prosecution claim. *See*, ECF #32, p. 7, line 11. As was documented in the Defendants' motion,
13 Ribar's case was dismissed after he completed the conditions of a deferred sentence following
14 his no contest plea to trespassing. *See*, ECF # 29, Exhibit 7. Ribar's reference to one single
15 element of a malicious prosecution claim (an element which is not part or parcel of the
16 Defendants' arguments in their motion) does nothing to contradict the evidence and arguments
17 set forth in the Defendants' motion as to the legal justification for dismissal of this claim.

18 In order to set forth a prima facie claim of malicious prosecution, whether premised on
19 state or federal law, Ribar must show that a defendant instigated a criminal proceeding with
20 improper purpose and without probable cause. Thus, Ribar must show that Mr. League
21 prosecuted him with malice and without probable cause and that he did so for the purpose of
22 denying him of a specific constitutional right. *See, McDonough v. Smith*, 588 U.S. 109, 116, 139
23 S. Ct. 2149 (2019).

24 That there was ample probable cause for the criminal charges brought against Ribar is
25 detailed in Defendants' Motion for Summary Judgment. The video taken by the Ribar himself
26 on August 30, 2022, clearly shows that Ribar was confronted repeatedly by officers with NDOC
27 and advised to leave the prison property. Further, there was ample probable cause to prosecute
28 Ribar for a violation of NRS 203.119 which relates to the commission of an act in the area of a
public building which interferes with its activities. Based upon evidence obtained from Warden

1 Frazier Fernandeis (and other NDOC officers), Ribar was videotaping sensitive security areas at
2 the property, including fence lines, security measures, and private vehicles of prison staff parked
3 in the prison's parking lot. *See*, ECF #29, Exhibit 1, ¶6. Based upon the actions of Ribar, a
4 lockdown of the entire prison facility and surrounding areas was put into effect. *Id.* at ¶5. This
5 included moving hundreds of inmates and staff to secure locations and verifying that everyone
6 was accounted for and that the facility was secure. *Id.*

7 Based upon these uncontroverted facts, it is plainly evident that the Carson City District
8 Attorney's Office had probable cause to commence the criminal prosecution at issue and Ribar
9 presents no evidence to contradict that submitted by the Defendants with their dispositive
10 motion.

11 Nor does Ribar offer any evidence or argument in opposition to Defendants' position that
12 Mr. League is entitled to summary judgment in his favor on absolute immunity grounds. Acts
13 undertaken by a prosecutor in the course of his or her role as an advocate for the state are entitled
14 to the protections of absolute immunity. *See, Mitchell v. Forsyth*, 472 U.S. 511, 526, 105 S. Ct.
15 2806 (1995). No evidence has been offered by Ribar which would suggest (or even allege) that
16 Mr. League was acting outside of his role as an advocate for the state in connection with the
17 criminal prosecution of Ribar on charges stemming from his arrest on August 30, 2022. Ribar
18 has offered no argument in opposition to the Defendants' position in this regard nor does he
19 address at all that aspect of the Defendants' motion in which they set forth the evidence and
20 justification for dismissal of Ribar's malicious prosecution claims. Accordingly, these claims,
21 which appear to include malicious prosecution premised on both federal and state law, must be
22 dismissed and judgment entered in Defendants' favor as a matter of law, including in favor of
23 Mr. League, whose only connection to the events in questions is that he was the attorney with the
24 Carson City District Attorney's Office tasked with prosecuting the claims against Ribar.

25 **5. Inapplicable Constitutional Amendments and Criminal Statutes**

26 As set forth in Defendants' motion, Ribar references a number of constitutional
27 amendments which are simply inapplicable to the facts of this case, including the Fifth, Eighth
28 and Fourteenth Amendments, as well as identical provisions in the Nevada Constitution. The

1 Fifth Amendment's Due Process protections apply to the federal government, not to States and
 2 state actors. *See, Bingue v. Prunchak*, 512 F.3d 1169, 1174 (9th Cir. 2008). The Eighth
 3 Amendment applies only after a conviction. *See, Graham v. Connor*, 490 U.S. 386, 393, fn. 6,
 4 109 S. Ct. 1865 (1989). The Due Process clause of the Fourteenth Amendment protects pretrial
 5 detainees from the use of excessive force that amounts to punishment only after a seizure or
 6 arrest ends and pretrial detention begins. None of these constitutional amendments, nor identical
 7 provisions in the Nevada Constitution, apply to the facts and circumstances at issue in this case
 8 and Ribar failed to address any aspect of the Defendants' arguments in this regard.

9 Ribar also references numerous state statutes in a footnote appearing on every page of his
 10 Complaint. These include NRS 484B.653 (reckless driving), NRS 207.190 (coercion), NRS
 11 200.310 (kidnapping), NRS 205.2715 (related to vehicles), NRS 197.200 (oppression) and NRS
 12 205.220 (grand larceny). These criminal statutes provide no basis for tort liability against the
 13 Defendants and Ribar failed to address Defendants' arguments in this regard in his opposition.
 14 To the extent Ribar intended to seek damages against the Defendants based upon any of the
 15 aforementioned statutes, such claims should be dismissed and judgment entered in favor of the
 16 Defendants as a matter of law.

17 **B. RIBAR'S CLAIMS BROUGHT AGAINST JASON BUENO SHOULD BE**
 18 **DISMISSED AND JUDGMENT ENTERED IN DEPUTY BUENO'S FAVOR AS A**
 19 **MATTER OF LAW.**

20 **1. Alleged Wrongful Arrest**

21 Given Ribar's failure to address the lion's share of arguments raised by Defendants in
 22 their motion, the two discreet issues which remain to be addressed include only Ribar's Fourth
 23 Amendment claims against Jason Bueno and Ribar's First Amendment claim against Carson
 24 City. Ribar's Fourth Amendment claim consists of two elements. First, Ribar appears to claim
 25 that Deputy Bueno did not have sufficient probable cause to effect his arrest on August 30, 2022,
 26 and/or that Ribar was arrested by Deputy Bueno in retaliation for Ribar having allegedly engaged
 27 in First Amendment protected activity. Second, Ribar claims that Deputy Bueno violated the
 28 Fourth Amendment's prohibition on the use of excessive force with respect to Ribar's placement

1 in the back of his patrol vehicle following his arrest and for the short period of time it took
2 Deputy Bueno to transport Ribar from the scene of his arrest to the Carson City Jail.

3 With respect to the legality of Ribar's arrest, Ribar argues in his opposition that because,
4 in his estimation, he had a right to videotape in the area in question by virtue of NRS 171.1233,
5 Deputy Bueno lacked probable cause to arrest him. This argument is without merit and is not
6 supported by the statute upon which Ribar largely bases his lawsuit.

7 NRS 171.1233 provides as follows:

8 "1. A person who is not under arrest or in the custody of a peace officer may record a
9 law enforcement activity and maintain custody and control of that recording and any
10 property or instruments used by the person to record a law enforcement activity. A
11 person who is under arrest or in the custody of a peace officer does not, by that status
12 alone, forfeit the right to have any such recordings, property or instruments maintained
and returned to him or her. ***This subsection must not be construed to authorize a person
to engage in actions that interfere with or obstruct a law enforcement activity or
otherwise violate any other law in an effort to record a law enforcement activity.***"

13 See, NRS 171.1233(1)(emphasis added). "Law enforcement activity" is defined under the statute
14 as "any activity by a peace officer acting under the color of law." *Id.* at 171.1233(3)(a).

15 In his opposition, Ribar contends that, based upon this statute, the NDOC officers had no
16 right to order that he cease filming areas of the prison and that Deputy Bueno had "no lawful
17 basis" on which to arrest him for filming areas of the prison. The express language of the statute
18 contradicts Ribar's position in this regard, as the statute does not permit a person to engage in
19 carte blanche recording of "law enforcement activities" where such actions interfere with or
20 obstruct law enforcement activities. As set forth in Defendants' Motion for Summary Judgment,
21 when Deputy Bueno arrived on scene after being dispatched to the area at the request of NDOC
22 officers, Sgt Robert Smith of NDOC informed him that Ribar was parked on the prison road and
23 was filming in restricted areas.¹ See, ECF #29, Exhibit 1, ¶4. Sgt. Smith further informed
24 Deputy Bueno that the area in which Ribar was walking and filming was restricted State property
25 and that he was not authorized to either remain on the property or continue his activities. *Id.*
26 Ribar was not only filming fence lines and security measures at the prison, he was filming

27
28 ¹It is highly questionable whether Ribar's actions in filming fence lines and other security
measures of the prison, along with private vehicles of prison staff members, even constitutes
filming of "law enforcement activities" within the meaning of NRS 171.1233.

1 private vehicles of staff members parked in the prison's parking lot. *Id.* As a result of the
2 actions of Ribar, and the security risks he posed, Sgt. Smith ordered a lockdown of the entire
3 prison facility and surrounding area. *Id.* at ¶5. This included moving hundreds of inmates and
4 staff to secure locations and verifying that everyone was accounted for and that the facility was
5 secure. *Id.* This evidence regarding the interference caused by Ribar with the operation of the
6 prison is uncontested in this case. Ribar offers nothing to counter it in his opposition other than
7 the wholly conclusory statement that he had a "right to record law enforcement activities in this
8 public area." Ribar's conduct resulted in a lockdown of the entire prison and surrounding areas.
9 NRS 171.1233 does not permit actions such as those taken by Ribar on August 30, 2022, nor
10 does it provide any support for Ribar's claim that Deputy Bueno lacked probable cause for his
11 arrest on grounds that Ribar was exercising First Amendment rights he premises upon the statute
12 at issue.

13 Deputy Bueno had more than sufficient probable cause to arrest Ribar for trespassing,
14 obstructing a public officer, and disturbing the peace. Under the Fourth Amendment, a
15 warrantless arrest requires probable cause. *See, U.S. v. Lopez*, 482 F.3d 1067, 1072 (9th Cir.
16 2007). A law enforcement officer is privileged to make an arrest where probable cause exists.
17 Probable cause to arrest exists when the arresting officer has knowledge or reasonably
18 trustworthy information sufficient to warrant a prudent person of reasonable caution in the belief
19 that an offense has been committed by the person to be arrested. *See, Gasho v. United States*, 39
20 F.3d 1420, 1427 (9th Cir. 1994); *see also, Beck v. Ohio*, 379 U.S. 89, 91, 85 S. Ct. 223 (1964).
21 "Probable cause is an objective standard" and an arresting officer's subjective intention is
22 immaterial to the analysis of reasonableness. *Lopez, supra.* at 1072. Probable cause to arrest
23 does not require awareness of a particular crime, only that some crime may have been
24 committed. *See, Illinois v. Gates*, 462 U.S. 213, 243, fn 13, 103 S. Ct. 2317 (1983). Even where
25 a law enforcement officer is not aware of all of the underlying facts that provided probable cause
26 for arrest, he or she may nonetheless act reasonably in relying on information received by other
27 law enforcement officials. *See, Kayo v. Mertz*, 531 F. Supp.3d 774, 795 (S.D. N.Y. 2021); *see*
28

1 *also, United States v. Colon*, 250 F.3d 130, 135 (2nd Cir. 2001). In a §1983 false arrest case, the
2 burden of establishing the absence of probable cause rests on the plaintiff. *Kayo, supra.* at 789.

3 NRS 207.200 pertaining to the criminal offense of trespassing, provides that a person
4 who . . . willfully goes or remains upon any land or in any building after having been warned
5 during the previous 24 months by the owner or occupant thereof not to trespass is guilty of a
6 misdemeanor. *See*, NRS 207.200(1)(b). After he arrived on scene, Deputy Bueno was advised
7 by Sgt. Smith and Warden Fernandeis, both sworn law enforcement officers, that Ribar had
8 committed the offense of trespass in that he had been asked multiple times to leave the property
9 and had refused. *See*, ECF #29, Exhibit 2. Ribar's own video taken on the day of the incident
10 clearly documents the multiple times NDOC officers instructed Ribar to leave the property and
11 the multiple times Ribar refused. Thus, there was more than sufficient probable cause for
12 Ribar's arrest on charges of trespass on August 30, 2022.

13 Deputy Bueno also had probable cause to arrest Ribar for a violation of NRS 203.119,
14 which provides that a person "shall not commit any act in a public building or on the public
15 grounds surrounding the building which interferes with the peaceful conduct of activities
16 normally carried on in the building or on the grounds." *See*, NRS 203.119(1). The statute
17 further provides that a person who refuses to leave any public building or grounds under such
18 circumstances upon request by the proper official is guilty of a misdemeanor. *See*, NRS
19 203.119(2). "Public building" under the statute includes any building owned by the State of
20 Nevada and used for any public purpose. *See*, NRS 203.119(4)(b)(2). Deputy Bueno was
21 informed that, as a result of Ribar's actions in remaining on prison grounds and in filming
22 security measures and fence lines around the facility, NNCC had to initiate a lockdown of the
23 entire facility and surrounding areas. *See*, ECF # 29, Exhibit 1, ¶5. As such, Deputy Bueno had
24 ample probable cause to arrest Ribar for obstructing the operations of the prison.

25 Ribar's conclusory allegation that Deputy Bueno lacked legal cause to arrest him based
26 upon NRS 171.1233 is not supported by the undisputed facts of this case, the language of the
27 statute itself, or any case law or legal argument identified by Ribar in his opposition. The
28 existence of probable cause is fatal to Ribar's claim of wrongful arrest and Deputy Bueno is

1 entitled to judgment in his favor as a matter of law. The same analysis is applied to Ribar's state
2 tort claim for false imprisonment and the existence of probable cause for Ribar's arrest warrants
3 the dismissal of same on summary judgment. *See, Marschall v. City of Carson*, 86 Nev. 110,
4 112, 464 P.2d 494 (Nev. 1970).

5 Even if Deputy Bueno were not entitled to judgment in his favor of Ribar's Fourth
6 Amendment wrongful arrest claim on substantive grounds, the doctrine of qualified immunity
7 provides separate grounds for judgment in his favor as a matter of law. A government official is
8 entitled to qualified immunity from a claim of damages unless the plaintiff raises a genuine issue
9 of material fact showing (1) a violation of a constitutional right and (2) that the right was clearly
10 established at the time of the alleged misconduct. *See, Evans v. Skolnik*, 997 F.3d 1060, 1064
11 (9th Cir. 2021); citing *Pearson v. Callahan*, 555 U.S. 223, 232, 129 S. Ct. 808 (2009). A
12 government official violates clearly established law when, at the time of the challenged conduct,
13 the contours of the right are sufficiently clear that every reasonable official would have
14 understood that what he or she was doing violates that right. *Evans, supra.* at 1066. "Although
15 the Supreme Court 'does not require a case directly on point for a right to be clearly established,
16 existing precedent must have placed the statutory or constitutional question beyond debate.'" *Id.*;
17 citing *Kisela v. Hughes*, 584 U.S. 100, 138 S. Ct. 1148, 1152 (2018). "This demanding standard
18 protects all but the plainly incompetent or those who knowingly violate the law." *District of*
19 *Columbia v. Wesby*, 583 U.S. 48, 138 S. Ct. 577, 589 (2018).

20 Ribar's argument that Deputy Bueno is not entitled to the protection of qualified
21 immunity in this case is based exclusively on NRS 171.1233. Ribar argues in this regard that he
22 was "legally entitled" to engage in the conduct at issue pursuant to NRS 171.1233 and that, as a
23 result, qualified immunity does not apply. This argument is without merit based upon the
24 express language of the statute upon which Ribar so heavily relies. As discussed above, NRS
25 171.1233 does provide members of the public with certain rights to record "law enforcement
26 activities." *See*, NRS 171.1233(1). However, the statute makes abundantly clear, and
27 specifically states, that a person does not have a right to engage in conduct that interferes with, or
28 obstructs, a law enforcement officer in his or her duties. Here, it is undisputed that Sgt. Smith

1 and Warden Fernandeis informed Deputy Bueno that Ribar's actions in filming fence lines and
2 other security measures caused a severe interruption in prison operations to the extent that the
3 prison and surrounding areas were ordered into lockdown. Given the plain language of NRS
4 171.1233(1), it would not have been clear to a reasonable officer on scene that Ribar's alleged
5 right to record "law enforcement activities" somehow precluded Ribar's arrest for trespass and
6 obstruction under these circumstances. Nor is there any other legal precedent which would have
7 placed Deputy Bueno on notice that his actions in arresting Ribar for the offenses described
8 herein would have been, or was, a violation of the Fourth Amendment. Accordingly, Deputy
9 Bueno is entitled to summary judgment of Ribar's Fourth Amendment wrongful arrest claim on
10 qualified immunity grounds.

11 Although Ribar failed to address the issue in his opposition to the Defendants' motion,
12 there is also no evidence to support any claim that Deputy Bueno's arrest of Ribar was done in
13 retaliation for Ribar having exercised any rights protected by the First Amendment. First, the
14 existence of probable cause for Ribar's arrest is fatal to his claim premised on First Amendment
15 retaliation. *See, Nieves v. Bartlett*, 547 U.S. 250, 256, 126 S. Ct. 1695 (2019). Second, there is
16 no evidence whatsoever which demonstrates that Ribar's alleged speech (his claim that he had a
17 right to film activities at the NNCC) played any part in Deputy Bueno's actions in taking Ribar
18 into custody. Deputy Bueno was dispatched to the NNCC in response to the State's call for
19 assistance with a trespass incident. Deputy Bueno had no information as to the reasons why
20 Ribar was present on prison property or why he was filming areas of the prison, including
21 security measures and prison fence line.² He was simply responding to a property owner's
22 request, here the State, to remove a person from property who was trespassing and causing the
23 interruption of operations at the prison. Ribar simply cannot demonstrate a causal connection
24

25
26 ²In other words, Deputy Bueno had no knowledge or information at the time he was dispatched
27 to the prison, or at the time of Ribar's arrest, as to what "viewpoint" Ribar may have been
28 espousing. As such, there is not, and will never be, any evidence to suggest that Deputy Bueno's
actions on August 30, 2022, were somehow motivated by his desire to censor any "viewpoint"
Plaintiff may have had or that his actions were somehow motivated by any First Amendment
protected activity in which Plaintiff may claim to have been engaged.

1 between his arrest and the activities in which he was engaged prior to Deputy Bueno's arrival on
2 scene.

3 Based upon all of the foregoing, Ribar's Fourth Amendment claim for wrongful arrest,
4 his state tort claim for false imprisonment, and any identical claim premised upon Article 1, ¶18
5 of the Nevada Constitution must be dismissed and judgment entered in favor of Deputy Bueno as
6 a matter of law.

7 **2. Alleged Excessive Force**

8 As for any claim premised upon Deputy Bueno's actions in placing Ribar in the back of
9 his patrol vehicle for a short period of time after his arrest and through transport of Ribar to the
10 Carson City Jail (what Plaintiff refers to as "hot boxing"), there is simply no evidence, nor has
11 Ribar offered any, which would even remotely suggest a violation of the Fourth Amendment
12 under the circumstances.

13 A claim for the alleged use of excessive force by an officer during transportation of an
14 arrestee is analyzed under the Fourth Amendment's objective reasonableness standard. *See,*
15 *Fontana v. Haskin*, 262 F.3d 871, 878 (9th Cir. 2001). Although unnecessary exposure to heat
16 may constitute a constitutional violation, being briefly detained in uncomfortable conditions such
17 as a hot patrol car does not amount to a constitutional violation. *See, Arias v. Amador*, 61
18 F.Supp.3d 960, 976 (E.D. Cal. 2014).

19 There are no questions of material fact in this case which would support Ribar's claim
20 that he was subjected to excessive force based upon the conditions present in Deputy Bueno's
21 patrol vehicle on August 30, 2022. First, all of the events in question are contained on the body
22 camera video and dash cam video submitted to the Court by the Defendants with their motion.
23 Contrary to Ribar's wholly conclusory allegations to the contrary, Deputy Bueno's body worn
24 camera video shows that the rear passenger side window of his patrol vehicle was open for the
25 majority of the time after Ribar was placed in the vehicle. *See*, ECF #29, Exhibit 2. Despite any
26 attempted argument by Ribar to the contrary, Ribar can clearly be heard talking to the law
27 enforcement officers on scene through the open window while he was seated in the vehicle. *Id.*
28 Ribar can be observed for the entire period of time he was seated in Deputy Bueno's vehicle, a

1 total of only 27 minutes, and at no time does he appear to be in distress or uncomfortable. *See*,
2 ECF # 29, Exhibit 3. The vehicle was running for the entire period of time Ribar was in the
3 vehicle and the air conditioning was on. *See*, ECF #29, Exhibit 1, ¶12; *see also*, ECF #29,
4 Exhibit 2. That the air conditioning was running is readily observable from the video submitted
5 by the Defendants with their motion. *See*, ECF #29, Exhibit 2. Air flow was provided to the
6 back seat of Deputy Bueno's vehicle at all times while Ribar was seated in same (and Ribar
7 cannot possibly, and does not, have personal knowledge contrary to this evidence). *See*, ECF
8 #29, Exhibit 1, ¶12. Ribar was alone in Deputy Bueno's vehicle for only 14 minutes before
9 Deputy Bueno transported him from the scene of his arrest to the Carson City Jail. Thereafter,
10 Ribar spent 13 minutes inside Deputy Bueno's vehicle during the ride to the Jail and his removal
11 from the vehicle.

12 Ribar's opposition to the Defendants' arguments in this regard consists of nothing more
13 than his claim that the temperature in Deputy Bueno's vehicle caused him "discomfort" and
14 caused him to sweat. While the body camera video does not, in fact, support Ribar's claim that
15 he became "soaked in sweat," this conclusory allegation does not support any claim that Ribar
16 suffered injury of any kind during the brief period of time he spent in the backseat of Deputy
17 Bueno's patrol vehicle. Based upon the undisputed facts as set forth in the video provided by the
18 Defendants to the Court, this case is akin to those in which the Courts have found no
19 constitutional violation as related to confinement of an individual in a patrol vehicle. *See, Arias*,
20 *supra*. at 976 (post-arrest detention for approximately 15 minutes in "very hot" police car in
21 which the window was rolled down about 4 inches was not a violation of the Fourth
22 Amendment); *Estmon v. City of New York*, 371 S. Supp.2d 202, 214 (S.D.N.Y. 2005)(finding no
23 Fourth Amendment violation where the plaintiff was held in a hot police car for ten minutes
24 without injury); *Glenn v. City of Tyler*, 242 F.3d 307, 314 (5th Cir. 2001)(finding no Fourth
25 Amendment violation where the plaintiff was left in an unventilated vehicle in the sun for
26 approximately 30 minutes); *Kanvick v. City of Reno*, 2008 WL 873085 (D. Nev. 2008)(no Fourth
27 Amendment violation where the plaintiff was placed in allegedly hot patrol vehicle for
28

1 approximately 17 minutes and offered no evidence of any alleged injuries).³ Cf. *Kassab v. San*
2 *Diego Police Dep't.*, 453 F. App'x 747, 748 (9th Cir. 2011)(plaintiff made out an colorable
3 Fourth Amendment violation where plaintiff had been detained in police car for more than four
4 hours with the window rolled up, no air conditioning, and an interior temperature of 115 degrees
5 with evidence that the plaintiff suffered from heat stroke, had difficulty breathing and almost
6 passed out several times).

7 The only other argument offered by Ribar on the subject of his excessive force claim
8 (aside from his argument that the temperature in the rear of the patrol vehicle made him sweat) is
9 his new reference (one that does not appear in his Complaint) that he was not wearing a seatbelt
10 while seated in the back of Deputy Bueno's vehicle. Ribar offers no evidence as to how this
11 alleged fact caused him any injury nor does he reference a single case in which the Courts have
12 held that such conduct (even if true) constitutes excessive force under the Fourth Amendment.

13 The evidence in the form of the video submitted by the Defendants with their Motion for
14 Summary Judgment is undisputed and it clearly demonstrates that Ribar was not subjected to
15 excessive force by Deputy Bueno on August 30, 2022. Even if one could conceivably find a
16 Fourth Amendment violation under the circumstances, Deputy Bueno would be, and is, entitled
17 to summary judgment based on qualified immunity. It simply cannot be said that it was clearly
18 established law in the Ninth Circuit (or elsewhere) that Deputy Bueno's actions in placing Ribar
19 in the back of his patrol vehicle for 27 minutes while he completed his investigation and drove
20 Ribar to the Carson City Jail constituted excessive force under the Fourth Amendment, as there
21 is no legal precedent which would have placed Deputy Bueno on notice that his actions were in
22 any way unlawful. Ribar's claim that qualified immunity somehow does not apply in this case
23 based upon his conclusory statement that Deputy Bueno's actions were motivated by "viewpoint
24 discrimination" is wholly lacking in both factual and legal support. Deputy Bueno is entitled to
25 judgment in his favor as a matter of law because he committed no constitutional violation and the
26 law was not clearly established that conduct similar to that at issue would have constituted a
27 constitutional violation.

28 _____
³See, ECF # 29, Exhibit 8, *Kanvick v. City of Reno*, Case No. 3:06-cv-00058-RAM.

1 To the extent Ribar claims to rely upon the Nevada Constitution with respect to his
 2 placement in Deputy Bueno's vehicle following his arrest, the language of Article 1, §18 relating
 3 to unlawful search and seizure is identical to the Fourth Amendment of the United States
 4 Constitution and is subject to dismissal on the same grounds.

5 **C. ANY CLAIM PREMISED UPON THE FIRST AMENDMENT SHOULD BE**
 6 **DISMISSED AND JUDGMENT ENTERED IN FAVOR OF THE DEFENANTS AS**
 7 **A MATTER OF LAW.**

8 Aside from the Fourth Amendment allegations brought against Deputy Bueno, the only
 9 other claim Ribar addresses in any meaningful way in his opposition is his First Amendment
 10 claim of alleged "viewpoint discrimination" premised upon the (wholly conclusory) allegation
 11 that Carson City deleted a comment he made on social media. Ribar offers *no evidence*,
 12 admissible or otherwise, to support such a claim. Rather, Ribar mentions the actions of Carson
 13 City in allegedly deleting a social media post of another individual, identified as William B.
 14 Moore, and claims, without any evidence, that Carson City maintains a "block list" of
 15 unidentified persons whom Ribar claims are not permitted to post things on unidentified social
 16 media accounts. In his opposition, Ribar describes this information as "newly provided
 17 evidence," yet he references receipt of this alleged evidence in September of 2022. Ribar has
 18 provided no such evidence to the Court in opposition to the Defendants' motion and Ribar has
 19 produced no such evidence in this case (despite the fact that discovery closed on September 9,
 20 2024). Ribar has offered no evidence to the Court or to the Defendants which in any way
 21 supports a claim against the City for violation of his First Amendment rights.

22 As is true of his Complaint, Ribar has identified no individual associated with Carson
 23 City who was allegedly involved in any violation of his First Amendment rights as related to
 24 social media accounts in his opposition to the Defendants' motion. As such, Ribar must
 25 demonstrate that Carson City had in place a policy, practice or custom which was the moving
 26 force behind the violation of *his* constitutional rights. *See, Monell v. Dep't. of Soc. Servs.*, 436
 27 U.S. 658, 694, 98 S. Ct. 2018 (1978). In order to establish liability for government entities under
 28 §1983, a plaintiff must prove (1) that the plaintiff possessed a constitutional right of which he or
 she was deprived; (2) that the municipality had a policy; (3) that the policy amounts to deliberate

indifference to the plaintiff's constitutional rights; and (4) that the policy is the moving force behind the constitutional violation. *See, Dougherty v. City of Covina*, 654 F.3d 892, 900 (9th Cir. 2011). Proof of a single instance of unconstitutional activity is not sufficient to impose civil rights liability on a government entity unless proof of the incident includes proof that it was caused by an existing, unconstitutional municipal policy which can be attributed to a final policy-making official. An isolated or sporadic incident cannot form the basis of *Monell* liability for an improper custom or practice. *See, Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996).

Ribar has offered no evidence in support of a First Amendment claim against the City. Ribar references the alleged violation of rights of other individuals without providing any evidence whatsoever to prove his conclusory allegations and Ribar has produced no such evidence in this case, despite his claim to having been in possession of same for more than two years. Ribar's conclusory allegations regarding an alleged violation of his First Amendment rights based on issues related to unidentified social media accounts maintained by the City is insufficient as a matter of law and Ribar cannot avoid summary judgment of a *Monell* claim against the City by resting on such conclusory statements. There is simply no evidence in this case which supports Plaintiff's allegation that an unlawful custom, policy or practice exists or existed in Carson City which was the moving force behind a violation of his First Amendment rights. Accordingly, summary judgment must be entered in favor of Carson City as to Ribar's First Amendment claim based upon his allegation that he was prevented from posting on any (unidentified) City social media accounts.

D. RIBAR'S CONTENTION THAT THE "FAILURE" OF THE STATE DEFENDANTS TO HAVE APPEARED IN THE CASE WARRANTS DENIAL OF THE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT IS WITHOUT MERIT.

Lastly, Ribar's claim that the absence of an appearance by the State of Nevada defendants in the case warrants denial of the Defendants' motion is specious and should be summarily rejected. The moving Defendants do not know why the State defendants have not made an appearance in the case and it is Ribar's burden to have taken appropriate action to have secured their appearance in the event they were properly served with the summons and

1 complaint. The Court entered a scheduling order on April 26, 2024. *See*, ECF # 13. Under the
2 Court’s scheduling order, the deadline for filing dispositive motions was set for October 9, 2024.
3 *Id.* Operating under the Court’s scheduling order, the Defendants filed their Motion for
4 Summary Judgment within the Court’s deadline. The fact that Ribar has failed to make efforts to
5 secure the appearance of the State defendants is immaterial to the issues raised in the
6 Defendants’ motion.

7 Further, Ribar’s claim that the granting of Defendants’ motion could result in
8 “fragmented judgments” in cases involving “jointly liable parties” misapprehends the law.
9 Simply put, the State cannot be held “jointly liable” for the conduct of any Carson City
10 Defendants and the City cannot be held “jointly liable” for the conduct of any State of Nevada
11 Defendants. To the extent Ribar failed to take any action to bring the State defendants into the
12 case prior to the close of discovery and the dispositive motion deadline, he did so to his
13 detriment and this failure has nothing whatsoever to do with the moving Defendants’ summary
14 judgment motion.

15 III

16 CONCLUSION

17 The existence of video of the entire events of August 30, 2022, upon which Ribar bases
18 his claims in this case demonstrates the absence of any genuine issues of material fact for trial.
19 Ribar largely fails to address the evidence and legal arguments made by the Defendants in their
20 Motion for Summary Judgment. With respect to the claims Ribar does mention in his
21 opposition, he provides no evidence, admissible or otherwise, which supports his claims in this
22 case. There are no genuine issues of material fact and the Defendants are entitled to judgment in

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 their favor as a matter of law. Accordingly, the Defendants respectfully request that Ribar's
2 Complaint be dismissed and that judgment be entered in their favor as a matter of law pursuant
3 to FRCP 56.

4 DATED this 13th day of November, 2024.

5 THORNDAL ARMSTRONG, PC

6
7 By: /s/ Katherine Parks
8 KATHERINE F. PARKS, ESQ.
9 Nevada Bar No. 6227
6590 S. McCarran Blvd., Suite B
10 Reno, Nevada 89509
Attorney for Defendants
CARSON CITY, JASON BUENO, SEAN
11 PALAMAR, TYSON LEAGUE, JASON
12 WOODBURY, and KENNETH FURLONG
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of Thorndal Armstrong, PC, and that on this date I caused the foregoing REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT to be served on all parties to this action by:

 X placing an original or true copy thereof in a sealed, postage prepaid, envelope in the United States mail at Reno, Nevada.

 United States District Court CM/ECF Electronic Filing Process

 hand delivery

 electronic means (fax, electronic mail, etc.)

 Federal Express/UPS or other overnight delivery

fully addressed as follows:

Drew J. Ribar
3480 Pershing Ln
Washoe Valley, NV 89704
Pro Se Ribar

DATED this 13th day of November, 2024.

 /s/ Laura Bautista
An employee of Thorndal Armstrong, PC